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5 UNITED STATES DISTRICT COURT
6 WESTERN DISTRICT OF WASHINGTON
7 AT SEATTLE

8 BARBARA STUART ROBINSON,

9 Plaintiff,

10 v.

11 CITY OF SEATTLE,

12 Defendant.

CASE NO. 24-cv-377

DISMISSAL ORDER

13
14 **1. INTRODUCTION**

15 Pro se Plaintiff Barbara Stuart Robinson brings this action against the City
16 of Seattle. Dkt. No. 1. On March 21, 2024, U.S. Magistrate Judge S. Kate Vaughn
17 granted Robinson leave to proceed in forma pauperis and recommended review of
18 Robinson's complaint under 28 U.S.C. § 1915(e)(2)(B). Dkt. No. 4. After reviewing
19 Robinson's complaint, *see* Dkt. No. 7, this Court found that Robinson failed to state
20 a claim upon which relief may be granted. Dkt. No. 11. Rather than dismissing the
21 case outright, the Court explained why Robinson's complaint failed to state a claim
22 upon which relief may be granted and instructed Robinson to submit a written
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1 response, no longer than five pages, as to why her complaint should not be
2 dismissed. *Id.*

3 Robinson has since submitted three responses to the Court's Order to Show
4 Cause, each seven pages or longer. Dkt. Nos. 12, 14, 16. Robinson has also
5 submitted two additional amended complaints. Dkt. Nos. 13, 15. Having reviewed
6 these submissions, the record, and the law, the Court concludes that none of
7 Robinson's responses or amended complaints resolve the problems the Court
8 identified in its Order to Show Cause. Robinson has failed to state a claim upon
9 which relief may be granted. The Court therefore DISMISSES this case without
10 prejudice under 28 U.S.C. § 1915(e)(2)(B).

11 2. BACKGROUND

12 On May 25, 2024, the Court issued an Order to Show Cause, summarizing
13 the allegations in Robinson's complaint and explaining why Robinson failed to state
14 a claim on which relief may be granted. Dkt. No. 11. In that Order, the Court
15 explained four critical defects in Robinson's complaint. *Id.* First, the complaint
16 alleged a violation of Washington's constitution, but not the federal constitution;
17 consequently, it failed to make a federal law claim sufficient to establish federal
18 court jurisdiction under 28 U.S.C. § 1331. *Id.* at 3. Second, even construing
19 Robinson's complaint liberally as one asserting a federal constitutional claim under
20 Section 1983, her Section 1983 claim nonetheless failed because a "claim under
21 *Monell* is the only means of asserting a § 1983 claim against a municipality." *Id.*
22 (quoting *Segura v. City of La Mesa*, 647 F. Supp. 3d 926, 941 (S.D. Cal. 2022)).
23 Third, Robinson's only allegations against the City of Seattle were that the Seattle

1 Police and Fire Departments failed to respond to her requests for protection against
2 private violence; but “a State’s failure to protect an individual against private
3 violence simply does not constitute a violation of the Due Process Clause.” *Id.* at 4
4 (quoting *DeShaney v. Winnebago Cnty. Dep’t of Soc. Servs.*, 489 U.S. 189, 197
5 (1989)). And fourth, absent a federal claim over which the Court has subject-matter
6 jurisdiction, Robinson provided no reason for the Court to exert supplemental
7 jurisdiction over her state-law negligence claim. *Id.* Rather than dismissing her
8 claims outright under 28 U.S.C. § 1915(e)(2)(B), the Court ordered Robinson to
9 “provide a written response within 21 days of entry of this order, limited to 5 pages,
10 as to why her complaint should not be dismissed.” *Id.* at 4-5.

11 Robinson proceeded to submit three responses to the Court’s Order to Show
12 Cause, each seven pages or longer. Dkt. Nos. 12, 14, 16. In these responses,
13 Robinson reiterates the factual allegations from her earlier complaint, asserting
14 that she was the victim of private acts of violence and that Seattle Police officers
15 ignored her requests for assistance and failed to protect her. *See generally id.* In her
16 responses, she also appears to invoke the Fourteenth Amendment of the U.S.
17 constitution, albeit in a confusing manner that seems to conflate state and federal
18 law. *See, e.g.*, Dkt. No. 12 at 1 (asserting a violation of “State Due Process Rights in
19 violation of 14th Amendment”).

20 Robinson also submitted two additional amended complaints, Dkt. Nos. 13,
21 15, both of which are largely identical to her previous complaint, *see* Dkt. No. 7, but
22 with two key changes, apparently in response to the Court’s Order to Show Cause.
23 First, the amended complaints expressly invoke Section 1983 as the statutory

1 vehicle for Robinson’s cause of action. *See* Dkt. Nos. 13, 15. And second, the
2 amended complaints assert causes of action under 18 U.S.C. § 242, a federal statute
3 that creates criminal liability for law enforcement officers who engage in certain
4 willful violations of constitutional rights. *See generally id.*

5 Considering Judge Vaughn’s recommendation that the complaint be reviewed
6 under Section 1915(e)(2)(B) before issuance of summons, as well as Robinson’s
7 failure to state a claim upon which relief may be granted, this Court still has not
8 issued a signed, sealed summons to facilitate service of process. *See* Dkt. Nos. 9, 17.

9 3. DISCUSSION

10 When a plaintiff proceeds in forma pauperis, the court must dismiss the
11 action if the court determines the plaintiff fails to state a claim on which relief may
12 be granted. 28 U.S.C. § 1915(e)(2)(B). When reviewing cases under Section 1915,
13 courts consider only the operative complaint. Here, the operative complaint is the
14 third amended complaint that Robinson filed on July 12, 2024. Dkt. No. 15; *see*
15 *Valadez-Lopez v. Chertoff*, 656 F.3d 851, 857 (9th Cir. 2011) (holding that amended
16 complaint supersedes original and renders original of no legal effect).

17 Under the Federal Rules of Civil Procedure, “[p]leadings must be construed
18 so as to do justice.” Fed. R. Civ. P. 8(e). Therefore, a “document filed pro se is to be
19 liberally construed and a pro se complaint, however inartfully pleaded, must be held
20 to less stringent standards than formal pleadings drafted by lawyers.” *Erickson v.*
21 *Pardus*, 551 U.S. 89, 94 (2007) (citations omitted). Courts are not to “dismiss a pro
22 se complaint without leave to amend unless ‘it is absolutely clear that the
23 deficiencies of the complaint could not be cured by amendment.’” *Rosati v. Igbinoso*,

1 791 F.3d 1037, 1039 (9th Cir. 2015) (citing *Akhtar v. Mesa*, 698 F.3d 1202, 1212 (9th
2 Cir. 2012) (quoting *Schucker v. Rockwood*, 846 F.2d 1202, 1204 (9th Cir.1988) (per
3 curiam))). But even so, the duties imposed on the Court by § 1915(e) are
4 unwavering. When an IFP plaintiff fails to state a claim on which relief may be
5 granted, the action must be dismissed.

6 In its May 25 Order to Show Cause, the Court identified four critical defects
7 in Robinson’s complaint. Dkt. No. 11 (summarized above). The Court now addresses
8 each of those four defects, in turn, to determine whether Robinson has cured them
9 through her Responses, Dkt. Nos. 12, 14, 16, and amended complaint, Dkt. No. 15.

10 First, the Court previously found that Robinson failed to adequately plead
11 federal question jurisdiction under 28 U.S.C. § 1331. Dkt. No. 11 at 3. As to this
12 defect, the Court now finds—construing Robinson’s complaint liberally—that
13 Robinson has met the minimal threshold necessary to satisfy jurisdiction. In its
14 previous Order, the Court explained that Robinson had alleged only violations of
15 the Washington State Constitution, not the United States Constitution, and had
16 failed to make a Section 1983 claim. *Id.* Since then, Robinson has invoked Section
17 1983 as the basis for her claims. *See* Dkt. No. 15 at 1. And in her responses to the
18 Court’s Order, she does, though unclearly, invoke her due process rights under the
19 Fourteenth Amendment. *See, e.g.*, Dkt. No. 12 at 1. And while she does not invoke
20 any federal constitutional rights in her actual operative complaint, she does assert
21 that “[a] right secured by the Constitution or laws of the United States was
22 violated.” Dkt. No. 15 at 2. Construing the complaint liberally, the Court finds that
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1 Robinson has adequately invoked Section 1983 and her federal constitutional rights
2 such that jurisdictional considerations are not preclusive.¹

3 However, despite her successful invocation of Section 1983, Robinson still
4 fails to rectify the second defect the Court identified in her complaint: her failure to
5 plead a *Monell* violation. Robinson sues the City of Seattle as the sole defendant,
6 and she repeatedly passes on naming any individual officers as defendants in her
7 assorted pleadings. As the Court noted in its previous Order, Dkt. No. 11 at 3, a
8 “claim under *Monell* is the only means of asserting a § 1983 claim against a
9 municipality.” *Segura v. City of La Mesa*, 647 F. Supp. 3d 926, 941 (S.D. Cal. 2022);
10 *City of Canton, Ohio v. Harris*, 489 U.S. 378, 385 (1989) (“[A] municipality can be
11 found liable under § 1983 only where the municipality itself causes the
12 constitutional violation at issue.”) (citing *Monell v. New York City Dept. of Soc.*
13 *Servs.*, 436 U.S. 658 (1978)). Through her various responses to the Court’s Order
14 and her amended complaints, Robinson has neither added a *Monell* claim nor
15 additional defendants. As a result, she has failed to state a claim upon which relief
16 may be granted.²

17 ¹ Presumably to establish federal question jurisdiction, Robinson also attempts to
18 add a cause of action under 18 U.S.C. § 242. *See* Dkt. No. 15 at 2. This attempt is
19 unavailing. Section 242 is a federal statute that creates criminal liability for law
20 enforcement officers who engage in certain willful violations of constitutional rights.
This statute does not provide Robinson with a private cause of action against the
City of Seattle.

21 ² While this failure would generally be fatal in a non-pro se case, it is not decisive
22 here, as the Court looked past any technical pleading deficiencies to give Robinson
23 “the benefit of any doubt.” *Hebbe v. Pliler*, 627 F.3d 338, 342 (9th Cir. 2010). Here,
Robinson has failed to allege a plausible factual basis for a claim on which relief

1 Third, in its previous Order, the Court noted that “a State’s failure to protect
2 an individual against private violence simply does not constitute a violation of the
3 Due Process Clause.” *DeShaney v. Winnebago Cnty. Dep’t of Soc. Servs.*, 489 U.S.
4 189, 197 (1989). Ultimately, this is the most decisive issue. The entire factual basis
5 for Robinson’s claims is that the Seattle Fire and Police Departments failed to
6 intervene to protect her from acts of violence at the hands of private individuals. As
7 the Court previously noted, “[t]he City’s alleged failure to protect Robinson from any
8 of these individuals does not constitute a constitutional violation under Section
9 1983.” Dkt. No. 11 at 4. Through her responses to the Court’s Order to Show Cause
10 and her amended complaints, Robinson has provided no additional factual basis to
11 support her claims. This failure is critical. Robinson’s inability to provide a factual
12 basis for her claim—even after submitting three separate amended complaints—
13 shows that this defect cannot be cured through further amendments to Robinson’s
14 pleadings. In short, Robinson has not plausibly alleged facts to support a violation
15 of her constitutional rights by the City of Seattle.

16 Fourth and finally, the Court’s previous Order noted that—given Robinson’s
17 failure to state a federal law claim upon which relief may be granted—Robinson had
18 provided the Court with no reason to exert supplemental jurisdiction over her state-
19 law negligence claim. Dkt. No. 11 at 4; *see* 28 U.S.C. § 1367(c)(3) (court can decline
20 to exercise supplemental jurisdiction over state claim if the district court dismisses
21 all claims over which it has original jurisdiction). This defect persists. As discussed

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23 may be granted. Thus, the Court dismisses this case on substance, not mere
pleading technicalities.

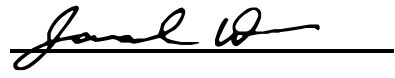
1 above, Robinson has not plausibly stated a federal claim upon which relief may be
2 granted. As such, the Court will not exert supplemental jurisdiction over her state
3 law claim.

4 4. CONCLUSION

5 The Court finds that Robinson has failed to state a claim on which relief may
6 be granted. The Court therefore DISMISSES this case without prejudice under
7 28 U.S.C. § 1915(e)(2)(B).

8 It is so ORDERED.

9 Dated this 21st day of October, 2024.

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11 Jamal N. Whitehead
12 United States District Judge
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